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 Attorney General Xavier Becerra*

IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

**STATE OF CALIFORNIA, by and through
 Attorney General Xavier Becerra;
 COUNTY OF LOS ANGELES; CITY OF
 LOS ANGELES; CITY OF FREMONT;
 CITY OF LONG BEACH; CITY OF
 OAKLAND; CITY OF STOCKTON,**

Plaintiff,

v.

**WILBUR L. ROSS, JR., in his official
 capacity as Secretary of the U.S.
 Department of Commerce; U.S.
 DEPARTMENT OF COMMERCE; RON
 JARMIN, in his official capacity as Acting
 Director of the U.S. Census Bureau; U.S.
 CENSUS BUREAU; DOES 1-100,**

Defendants.

3:18-cv-01865

**NOTICE OF FILING TRIAL
 DEPOSITION TRANSCRIPT FOR
 PAMELA KARLAN**

Dept: 3
 Judge: The Honorable Richard G.
 Seeborg
 Trial Date: January 7, 2019
 Action Filed: March 26, 2018

1 Plaintiffs hereby submit the trial deposition transcript for Pamela Karlan, attached hereto as
2 Exhibit A.

3
4
5 Dated: January 2, 2018

Respectfully Submitted,

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12 /s/ Gabrielle D. Boutin
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17 Dated: January 2, 2018

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Exhibit A

EXHIBIT A

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
3 STATE OF CALIFORNIA, by and) Case No.
 through Attorney General) 3:18-cv-01865
4 Xavier Becerra,)
)
5 Plaintiff,)
)
6 v.)
)
7 WILBUR L. ROSS, JR., in his)
 official capacity as Secretary)
8 of the U.S. DEPARTMENT OF COMMERCE;))
 RON JARMIN, in his official)
9 capacity as Acting Director of the)
 U.S. Census Bureau; U.S. Census)
10 Bureau; DOES 1-100,)
)
11 Defendants.)
-----))
12 AND RELATED ACTIONS.) Case No.
-----) 5:18-cv-02279

13 SEE PAGE 2 FOR COMPLETE CAPTION

14
15 TUESDAY, DECEMBER 18, 2018

16
17 Videotaped Deposition of PAMELA S. KARLAN, J.D.,
18 taken at the offices of Manatt Phelps & Phillips LLP,
19 1050 Connecticut Avenue, Northwest, Suite 600,
20 Washington, D.C., beginning at 9:06 a.m., before
21 Nancy J. Martin, a Registered Merit Reporter,
22 Certified Shorthand Reporter.
23
24
25

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
3 STATE OF CALIFORNIA, by and) Case No.
4 through Attorney General) 3:18-cv-01865
5 Xavier Becerra,)

6 Plaintiff,)

7 v.)

8 WILBUR L. ROSS, JR., in his)
9 official capacity as Secretary)
10 of the U.S. DEPARTMENT OF COMMERCE;)
11 RON JARMIN, in his official)
12 capacity as Acting Director of the)
13 U.S. Census Bureau; U.S. Census)
14 Bureau; DOES 1-100,)

15 Defendants.)
16 -----)

17 CITY OF SAN JOSE, a municipal) Case No.
18 corporation; and BLACK ALLIANCE FOR) 5:18-cv-02279
19 JUST IMMIGRATION, a California)
20 Non-Profit Corporation,)

21 Plaintiffs,)

22 v.)

23 WILBUR L. ROSS, JR., in his)
24 official capacity as Secretary of)
25 the U.S. Department of Commerce;)
26 U.S. DEPARTMENT OF COMMERCE;)
27 RON JARMIN, in his official)
28 capacity as Acting Director of the)
29 U.S. Census Bureau; U.S. CENSUS)
30 BUREAU,)

31 Defendants.)
32 -----)

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ALSO PRESENT:

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14 MICHAEL A. CANNON, CHIEF, GENERAL LITIGATION
DIVISION

I N D E X

PAGE

TESTIMONY OF PAMELA S. KARLAN, J.D.

BY MR. ROSENBERG 8

BY MR. DUKE 64

BY MS. FEDERIGHI 68

BY MR. ROSENBERG 80

BY MS. FEDERIGHI 82

E X H I B I T S

NUMBER	DESCRIPTION	MARKED
Exhibit 1	Expert Report and Declaration of Pamela S. Karlan, 50 pages	25

1 WASHINGTON, D.C., TUESDAY, DECEMBER 18, 2018;

2 9:06 A.M.

3 - - -

4 THE VIDEOGRAPHER: Good morning. We're
5 going on the record at 9:06 a.m. on December 18, 2018.
6 Please note that the microphones are sensitive and may
7 pick up whispering, private conversations, and
8 cellular interference. Please turn off all cell
9 phones or place them away from the microphones as they
10 can interfere with the deposition audio. Audio and
11 video recording will continue to take place unless all
12 parties agree to go off the record.

13 This is Media Unit 1 of the video recorded
14 deposition of Professor Pamela S. Karlan taken in the
15 matter of State of California, et al., plaintiff vs.
16 Wilbur L. Ross, Jr., in his official capacity as
17 Secretary of the United States Department of Commerce,
18 et al., defendants, filed in the United States
19 District Court for the Northern District of
20 California. Case No. 3:18-CV-01865.

21 This deposition is being held at the law
22 offices of Manatt Phelps & Phillips, LLP located at
23 1050 Connecticut Avenue, Northwest, Washington, D.C.
24 My name is Solomon Francis from the firm of Veritext
25 Legal Solutions, and I'm the videographer. The court

1 reporter is Nancy Martin of Veritext Legal Solutions.

2 At this time will counsel present in the room
3 and everyone attending remotely please state their
4 appearances and affiliations for the record.

5 MR. ROSENBERG: Yes. Ezra Rosenberg from the
6 Lawyers Committee for Civil Rights Under Law on behalf
7 of the plaintiffs, City of San Jose and the Black
8 Alliance for Just Immigration.

9 MS. GUARDADO: Ana Guardado of Manatt, Phelps
10 & Phillips on behalf of plaintiffs, City of San Jose
11 and Black Alliance for Just Immigration.

12 MS. FERRARI: Ana Ferrari from the California
13 Department of Justice on behalf of the State of
14 California.

15 MR. DUKE: Ben Duke from Covington & Burling
16 on behalf of the Kravits plaintiffs in the Kravits vs.
17 United States Department of Commerce, et al., case in
18 the District of Maryland.

19 Just as a note, this deposition has been
20 cross-noticed in that case as well.

21 MR. CANNON: Michael Cannon, U.S. Department
22 of Commerce, agency counsel.

23 MR. GARDNER: Joshua Gardner, United States
24 Department of Justice.

25 MS. FEDERIGHI: Carol Federighi, Justice

1 Department for the defendants.

2 THE VIDEOGRAPHER: Counsel on the phone?

3 MR. HOLTZMAN: Yeah. This is David Holtzman
4 of Holland & Knight for the County of Los Angeles.

5 THE VIDEOGRAPHER: At this time will our
6 court reporter please swear in the witness, and we can
7 proceed.

8
9 PAMELA S. KARLAN, J.D.,
10 having been first duly sworn/affirmed,
11 was examined and testified as follows:

12
13 EXAMINATION

14 BY MR. ROSENBERG:

15 Q. Good morning, Professor Karlan?

16 A. Good morning.

17 MR. ROSENBERG: And just for the record, this
18 deposition is being taken pursuant to court order in
19 the California and San Jose cases and cross-notices.
20 As Mr. Duke says, in the Maryland case as a
21 preservation deposition should any of the plaintiffs
22 choose to call Professor Karlan as a witness at trial.

23 What I would suggest is, to the extent that
24 any exhibits are marked here, that we just mark them
25 as a deposition exhibit, and then should they be moved

1 to trial by any party, they'll be replaced by an
2 exhibit number at trial. Is that okay?

3 MS. FEDERIGHI: Sure.

4 BY MR. ROSENBERG:

5 Q. Okay. Professor Karlan, are you presently
6 employed?

7 A. Yes, I am.

8 Q. With whom?

9 A. I am a professor at Stanford Law School. I'm
10 the Kenneth and Harle Montgomery professor of public
11 interest law, and I'm the codirector of the Stanford
12 Supreme Court Litigation Clinic.

13 Q. And what's your academic focus?

14 A. Constitutional law and litigation with
15 special emphasis on legal regulation of the political
16 process.

17 Q. How long have you taught at Stanford?

18 A. I've taught there since 1998 with a 20-month
19 break to work at the United States Department of
20 Justice.

21 Q. And what dates did you work at the Department
22 of Justice?

23 A. From January of 2014 through September of
24 2015 I worked there full time on an interagency
25 personnel arrangement, and then I had a consulting job

1 with the Department of Justice to finish up some of
2 the cases that I had been working on.

3 Q. What was your title at the Department of
4 Justice?

5 A. As a deputy assistant, attorney general in
6 the civil rights division.

7 Q. And what were your responsibilities at the
8 Department of Justice?

9 A. My primary responsibilities were to review
10 three of the civil rights divisions litigating
11 sections; the voting section, the employment
12 litigation section, and the office of special counsel
13 for unfair immigration-related employment practices.
14 I also helped to review the voting cases that were the
15 appellate section, and then I did a number of other
16 things at the department. I worked on a task force on
17 Windsor implementation, and I participated in the
18 general leadership of the civil rights division.

19 Q. Did your work at DOJ include any work
20 relating to Section 2 of the Voting Rights Act?

21 A. It did.

22 Q. And can you tell the court what kind of work
23 that was?

24 A. Well, there was one -- I should say at the
25 beginning there was one huge Section 2 vote dilution

1 case that was at the department when I was there that
2 I did not participate in because I had represented
3 some of the plaintiffs before I went to the DOJ. So I
4 was recused from that. That's the case that comes
5 ultimately to be known as Abbott against Perez when it
6 gets to the Supreme Court.

7 So the other Section 2 work that the
8 Department was working on at the time I participated
9 in, most of that was not vote dilution work at the
10 time. It was voter ID work and early voting, and the
11 likes are the two big cases, a case in North Carolina.
12 Chong and a case in Texas that did voter ID. But I
13 did work on some vote dilution cases where the
14 Department was filing statements of interest and the
15 like.

16 Q. Let's back up to the beginning of your
17 career. Did you -- where did you graduate from
18 college?

19 A. I graduated from Yale College in 1980.

20 Q. And did you go on to postgraduate work after
21 that?

22 A. Yes, I did a joint degree at Yale Graduate
23 School in the department of history and at Yale Law
24 School, and I received my J.D. and my M.A. in history
25 in 1984.

1 Q. And after you graduated from law school, what
2 did you do?

3 A. I clerked for a year at the federal district
4 court in New York in the southern district of New York
5 for Judge Abraham Sofaer, and I clerked for a year at
6 the U.S. Supreme Court for Justice Harry Blackmun.

7 Q. When you clerked for Justice Blackmun, did
8 you work on any cases involving the Voting Rights Act?

9 A. Yes, I did. That was the year that the
10 Supreme Court decided Thornburg against Gingles, and I
11 worked on that case.

12 Q. Did you provide the bench memo in that case?

13 A. I did.

14 Q. We'll talk a little bit about Gingles in a
15 bit.

16 After your clerkship with Justice Blackmun,
17 what did you do next?

18 A. I was an assistant counsel at the NAACP Legal
19 Defense Fund in New York.

20 Q. And what were your responsibilities at NAACP
21 LDF?

22 A. I was litigating, primarily doing voting
23 rights cases, but also doing Title 7 cases, and I did
24 one criminal case as well.

25 Q. And did the voting rights case include

1 Section 2 cases?

2 A. Yes, it did.

3 Q. And any other cases under the Voting Rights
4 Act?

5 A. Yes. So I worked on both Section 2 cases and
6 Section 5 cases.

7 Q. Can you provide a little more detail as to
8 the number of cases that you worked on that involved
9 Section 2 or Section 5 of the Voting Rights Act?

10 A. Sure. So it was -- it's a little hard to
11 give the number in the following sense. There's a
12 case that comes to be known as the Dillard litigation,
13 which has about 180 different docket numbers because
14 it started out as a defendant class action but then
15 was decertified, and I worked on that case.

16 I also worked on a case called Chisom against
17 Roemer that was the case in which the Supreme Court
18 ultimately held that Section 2 vote dilution
19 principles apply to judicial elections. I worked on
20 judicial election cases in Mississippi as well.

21 I worked on a series of Section 2 cases in
22 Arkansas that started out with a challenge to runoff
23 primaries but ultimately became a case about the 1990
24 round of apportionment, reapportionment for the state
25 legislature in Arkansas.

1 I worked on a series of Section 5 related
2 cases involving voter purges.

3 Did a number of amicus briefs in Section 2
4 cases around the country in which the Legal Defense
5 Fund was not representing a party. And so that was
6 the bulk of my work at the Legal Defense Fund save for
7 two Title 7 cases that I also worked on.

8 Q. When you talk about Section 2 vote dilution
9 cases, can you explain to the Court what you mean.

10 A. Sure. So Section 2 of the Voting Rights Act
11 says that no state or political subdivision can use a
12 voting practice or procedure that has the result of
13 denying minority voters, minority citizens, an equal
14 opportunity to participate and elect the candidates of
15 their choice. And there are basically two kinds of
16 cases under Section 2. One set of cases are about the
17 actual denial of the right to vote. So a voter ID
18 case would be an example of that.

19 The other are cases where minority voters are
20 able to cast a ballot and to have that ballot counted,
21 but the way the elections are arranged makes it
22 impossible for them, or makes it very difficult for
23 them, to elect the candidates of their choice. And
24 those are what they mean by vote dilution cases. So a
25 case where the kind of paradigm is either a challenge

1 to at large elections where the majority can keep all
2 of the seats, and the early cases I worked on were
3 mostly those kinds of cases.

4 Or later, cases about how districts are drawn
5 because how you draw the district can often determine
6 what groups are going to control the outcome in an
7 election regardless of how the votes are cast.

8 Q. And you mentioned Section 5 cases that you
9 worked on while at NAACP Legal Defense Fund. Were
10 they related to the issues in the Section 2 cases?

11 A. Some of them were very much related. So, for
12 example, one of the cases I worked on early in my time
13 at the Legal Defense Fund, helping out was a case
14 called Major against Trane, which involved
15 Congressional districts in Louisiana. And most of the
16 case actually was litigated before I got there.
17 Initially the Department of Justice precleared the
18 Congressional districts in Louisiana, and then private
19 plaintiffs challenged those districts as violating the
20 Voting Rights Act because the act was amended in 1982
21 in a way that showed that the way districts were drawn
22 in the New Orleans area made it impossible for a
23 relatively large black population in New Orleans
24 itself to elect any members of Congress.

25 So that was a case where the first part of

1 the case involved preclearance under Section 5, and
2 the second part of the case involved vote dilution
3 under Section 2.

4 Q. And you mentioned the Dillard cases. Were
5 those cases involving vote dilutions?

6 A. Yes. All of those were vote dilution cases.
7 It was a series of cases challenging the use of at
8 large elections to elect county commissions, county
9 boards of education, and city councils across Alabama.

10 Q. And you mentioned judicial election cases.
11 Were those also cases involving vote dilution?

12 A. Yes, they were.

13 Q. How long did you stay at NAACP Legal Defense
14 Funds?

15 A. So I was a full-time lawyer there for two
16 years, and then I continued on as a cooperating
17 attorney, really with a few breaks. Like, for
18 example, when I was at DOJ up until the present.

19 Q. And when you say, "cooperating attorney,"
20 what does that mean?

21 A. Well, on some of the cases it meant I took
22 the cases with me when I left LDF and I kept being the
23 lead litigator on them. On some of them it meant
24 writing amicus briefs. On some of it, it involved
25 giving advice to younger lawyers at the Legal Defense

1 Fund on voting rights related cases.

2 Q. And the cases that you took with you from the
3 Legal Defense Funds, did they include Section 2 vote
4 dilution cases?

5 A. Yes. The Chisom against Roemer case is
6 probably the best example of that, but I also kept
7 litigating some of the Dillard cases up, actually,
8 into the 2000's because that was when the final set of
9 these cases, which were initially filed in 1985, I
10 believe, that was when the final round of the cases
11 finished.

12 I kept helping out on the Arkansas runoff
13 cases, which were vote dilution cases as well.

14 Q. After you left NAACP Legal Defense Fund, what
15 did you do?

16 A. I accepted a job as an assistant professor of
17 law at the University of Virginia in Charlottesville,
18 Virginia in 1988.

19 Q. And how long did you teach at the University
20 of Virginia?

21 A. Well, that was where my full-time appointment
22 was until 1998 when I left for Stanford. But over the
23 course of the time that I was there, I was also a
24 visiting professor at various points for either a
25 semester or a year at Yale Law School, Harvard Law

1 School, NYU Law School and at Stanford Law School.

2 Q. And during that time period did your courses
3 that you taught cover Section 2 of the Voting Rights
4 Act?

5 A. Yes. I started teaching a course called
6 legal regulation of the political process in the
7 spring of 1989 and have taught it off and on fairly
8 consistently from then until quite recently.

9 In recent years I haven't taught the course
10 because I have a colleague who's also a coauthor of
11 our case book who likes to teach the course and
12 doesn't have quite the range of courses that he wants
13 to teach that I teach. So I don't teach -- I haven't
14 taught the voting rights course itself in a couple of
15 years.

16 Q. When you were teaching at this period of time
17 from 1988 to 1998, did you discuss issues involving
18 data relating to Section 2 of the Voting Rights Act in
19 your courses?

20 A. I did.

21 Q. Can you explain the sort of issues.

22 A. So the data issues mostly were in connection
23 with Thornburg against Gingles. As I mentioned
24 earlier, in Thornburg against Gingles the Supreme
25 Court laid out what later became as a sort of road map

1 for showing voter dilution. A set of three
2 prerequisites that anybody who wants to win a
3 Section 2 vote dilution case is going to have to meet.

4 And in our case book we had an -- I started
5 with a set of mimeograph materials I should say, you
6 know, cut-and-paste, but ultimately, we turned those
7 into a case book, and we devoted fairly substantial
8 attention at the time to Gingles. The Gingles
9 factors, how you went about proving them and the like.
10 Most of the discussions -- there was a little bit
11 discussion on Gingles 1, which is what I think we'll
12 be talking about later, but there was also a lot of
13 kind of ferment, methodological ferment about how you
14 prove Gingles 2 and 3, which go to the question of
15 racial block voting.

16 And so things like bivariate ecological
17 regressions, extreme precinct analysis and the like.
18 And so we spent a fair amount talking about those.
19 And, in addition, I spent a fair amount of time
20 talking about the so-called Senate report factors,
21 which come from the 1982 Senate report that
22 accompanied the amendments of Section 2 that
23 instituted the results test because a number of those
24 are data related.

25 For example, there's one that looks at

1 effective socioeconomic disparities on the ability of
2 minority citizens to participate effectively in the
3 political process.

4 Q. After you left Stanford -- after you left
5 University of Virginia, where did you go?

6 A. I went to Stanford in the summer of 1998.

7 Q. And Stanford is where you still are?

8 A. Yes, it is.

9 Q. And what courses have you taught at Stanford
10 during this period of time?

11 A. So I've taught a course called Constitutional
12 law that's just like what it sounds like.
13 Constitutional litigation, which is Section 1938,
14 Vivens and related issues. Legal regulation of the
15 political process, which is the course where I teach
16 most about the Voting Rights Act, but I also teach
17 there about political parties and sometimes about
18 ballot initiatives and the like.

19 I've taught professional responsibility.
20 I've taught sex discrimination. I teach a live client
21 clinic, the Supreme Court litigation clinic that
22 litigates cases at the U.S. Supreme Court. This year,
23 for example, with counsel in six cases that have been
24 argued already.

25 I teach -- let's see. What else have I

1 taught recently. I teach torts. I've taught civil
2 procedure, although I really have stopped teaching
3 civil procedure. I teach a series of undergraduate
4 classes. Most recently a class called justice in the
5 university. I teach a class that's a graduate-level
6 class universitywide seminar called ethics, conflicts
7 in the academy.

8 I think that covers all of them, but pretty
9 much everything that I teach is -- that I've taught
10 very recently is listed on my CV.

11 Q. And during this period of time, have you also
12 had some visiting professorships?

13 A. Yes. I was a visiting professor at Tel Aviv
14 University where I taught a course on comparative
15 regulation of the political process. I was a visiting
16 professor twice at Yale. One time I taught regulation
17 of the political process and Constitutional
18 litigation.

19 The other time I think I taught procedure and
20 Constitutional litigation. I was a visiting professor
21 back at the University of Virginia where I taught -- I
22 think I taught Constitutional litigation. I know I
23 taught legal regulation of the political process
24 because I had Justice Thomas come as a guest to the
25 class, and we talked about what would he have done if

1 he had been on the Supreme Court when they decided the
2 one-person, one-vote cases.

3 Q. Have you ever argued before the Supreme
4 Court?

5 A. Yes. I've argued eight times.

6 Q. Any of those cases voting rights cases?

7 A. Yes. Three of the cases are voting rights
8 cases. So Chisom against Roemer is a Section 2 vote
9 dilution case involving judicial elections.

10 Morse vs. Republican Party of Virginia was a
11 Section 5 case involving restrictions on who could
12 vote at the Virginia Republican conventions.

13 And Riley against Kennedy was a Section 5
14 case about changes in the way that vacant offices were
15 filled.

16 Q. Other than times you've argued before the
17 Supreme Court, have you also participated as amicus
18 curiae before the Supreme Court?

19 A. Yes, I have.

20 Q. On voting rights cases?

21 A. Yes.

22 Q. And can you estimate approximately how many
23 voting rights cases you've submitted amicus briefs?

24 A. Somewhere between half a dozen and a dozen.
25 And, again, those would all be listed on my CV.

1 Q. And we'll identify your CV pretty soon.

2 And did any of those voting rights cases on
3 which you participated as amicus include Section 2
4 vote dilution cases?

5 A. They did, and before I get to that, I should
6 mention I also served as counsel but not arguing
7 counsel in Section 2 vote dilution case. Most
8 recently in Abbott against Perez, I represented the
9 Mexican American legislative caucus Atalees in that
10 case.

11 Q. Other than Abbott vs. Perez, have you
12 represented other parties in Section 2 vote dilution
13 cases before the Supreme Court?

14 A. I think the other cases in which I
15 represented a party were cases -- well, let me qualify
16 that a little bit. There's a case called Presley
17 against Etowah County. At the Supreme Court the
18 question was a Section 5 question, but it was a
19 question that arose out of whether changes that were
20 made by counties in Alabama after they settled a
21 Section 2 case undermined the purpose of the Section 2
22 vote dilution case.

23 So, you know, when the case went back on
24 remand, it was decided on Section 2 grounds, but the
25 issue at the Supreme Court was solely a Section 5

1 issue.

2 Q. And I think I interrupted you when you were
3 going to discuss your amicus participation before the
4 Supreme Court in the Section 2 vote dilution cases.

5 A. Yes. So I'm trying to think -- I mean it's a
6 little complicated because a number of the cases had
7 Section 2 issues in them, but the issue, when it got
8 to the Supreme Court was framed in terms of either
9 Section 5 or in terms of what's called the Shaw
10 against Reno Doctrine, which says that you can't take
11 race into account too much.

12 So, for example, one of the big defenses in a
13 Shaw case is "But I had to draw the districts this way
14 in order to comply with Section 2 of the Voting Rights
15 Act." And those are where I think more of my amicus
16 participation at the Supreme Court was involved. That
17 is in Shaw cases where our client's position was that
18 the use of race was Constitutional here because it was
19 necessary in order to comply with the Voting Rights
20 Act, which was a compelling state interest for the use
21 of race.

22 Q. Have you been the author of any books?

23 A. Yes. I'm the coauthor of three case books,
24 Constitutional Law, which is now in its eighth
25 edition, Legal Regulation of the Political Process,

1 which is now in its fifth edition, and Civil Rights
2 Actions, which is now in its fourth edition.

3 Q. And do any of those books cover topics
4 relating to Section 2 of the Voting Rights Act?

5 A. Yes. Both the Constitutional law book, which
6 covers it briefly, and Legal Regulation of the
7 Political Process, which involves several hundred
8 pages of Voting Rights Act related.

9 Q. Including vote dilution?

10 A. Yes.

11 Q. Have you authored any articles that have
12 appeared in law journals and the like?

13 A. Yes. I've authored, I don't know, probably
14 close to 100 articles.

15 Q. Any of those articles deal with Section 2
16 vote dilution cases?

17 A. Yes, a number of them do.

18 Q. Do you know approximately how many?

19 A. Probably about a dozen of them are primarily
20 about Section 2 in one way or another, and another 15
21 discuss it in comparative terms with something else.

22 MR. ROSENBERG: I'm going to mark as our
23 first exhibit this document.

24 (Deposition Exhibit 1 was marked for
25 identification.)

1 BY MR. ROSENBERG:

2 Q. And Professor Karlan, could you identify
3 what's been marked as Exhibit 1?

4 A. Yes. This says it's a Rule 26(A)(2)(B)
5 expert report and declaration. It has a mistake on
6 it. It says, "of Pamela S. Karlan Ph.D." I'm not
7 sure where the Ph.D. came from.

8 Q. And just for the record, you did not put that
9 on there?

10 A. No. No. I've read the studies of resume
11 fraud, and I try to avoid that.

12 Q. One of our lawyers will take responsibility
13 for that mistake.

14 A. Yeah. I have a master's degree in science.

15 Q. And turning to what is marked -- what is
16 called "Appendix A-1" --

17 A. Yes.

18 Q. -- and then it continues through a whole
19 bunch of pages that has numbers that end around
20 Page 33.

21 A. Yeah.

22 Q. Can you identify that portion of Exhibit 1?

23 A. Yes. That is my CV.

24 Q. And are there any additions, any material
25 additions that you'd want to add to the exhibit?

1 A. Material additions --

2 REPORTER MARTIN: I'm sorry. That you want
3 to what?

4 MR. ROSENBERG: Add to the exhibit.

5 THE WITNESS: I don't think so. I'm just
6 looking to see if this is of the most recent versions.
7 Hold on. I can tell that pretty easily. Yes, I
8 believe this is the most recent version.

9 BY MR. ROSENBERG:

10 Q. Great.

11 A. So, no, I would have nothing to add.

12 Q. Did there come a time when you were retained
13 to testify as an expert in this case?

14 A. Yes.

15 Q. And approximately when was that?

16 A. It was the early summer of 2018.

17 Q. And who have you been retained by?

18 A. Initially I was retained by you, Ezra, and
19 then the State of California asked if they could
20 retain me as well, and I said, "yes." And then some
21 of the plaintiffs in the Maryland case, and, again, I
22 said that was fine by me.

23 Q. And what were you asked to do in this case?

24 A. So I was asked to offer an opinion on some
25 claims that were made in what's come to be known as

1 the Gary letter, which is Appendix B to this report.
2 It was a letter from Arthur Gary, who's the general
3 counsel of judicial management division at the
4 Department of Justice, to an official at the Census
5 Bureau. I'm not sure what Ron Jarmin's actual title
6 is, but he's got a long sort of -- because there's a
7 vacancy. He's now performing the nonexclusive
8 functions and duties of the director of the Census
9 Bureau.

10 Q. And turning your attention to what's been
11 marked as -- or what is designated Appendix B-001 --

12 A. Yes.

13 Q. -- through --

14 A. It should be three pages.

15 Q. -- 004 --

16 A. Yeah.

17 Q. -- in what's been marked as Exhibit 1 of this
18 deposition, is that the Gary letter you're referring
19 to?

20 A. Yes, it is.

21 Q. And by the way, you are being compensated for
22 your work as an expert in this case?

23 A. No, I'm not.

24 Q. How come?

25 A. I'm doing it pro bono, as I do all of the

1 outside work, basically, that I've done. I've only
2 once done outside work -- outside legal work, I should
3 say, as opposed to like Bar review courses and things
4 like that. But outside legal work, I've only once
5 been compensated by a client.

6 Q. And did you reach any conclusions after your
7 review of the Gary letter and your work in this case?

8 A. I did.

9 Q. And what are they?

10 A. My conclusion was that the statement that the
11 long form census was the most appropriate way to
12 answer questions regarding citizenship, that claim in
13 the letter was not accurate.

14 Q. And we'll get into the basis for your
15 conclusions. Are there any other conclusions other
16 than that?

17 A. Well, the conclusion is that as a practical
18 matter, the existing data sources now from the
19 American Community Survey, which is called the ACS,
20 and before that from a sampling, which was called the
21 census long form, are perfectly adequate for
22 plaintiffs to prevail in voting rights cases and get
23 remedies from the client.

24 Q. Okay. Now, a few minutes ago you were
25 talking about the Thornburg vs. Gingles factors.

1 A. Yes.

2 Q. Can you explain to the Court what was meant?

3 A. Sure. So in Thornburg against Gingles,
4 Justice Brennan's opinion for the Court identifies
5 three factors that he thinks will generally have to be
6 present in cases where plaintiffs are claiming vote
7 dilution. Those factors -- I'll get to in a moment --
8 get kind of reunified and firmed up along the way. So
9 it looked originally as if it was guidance, and now
10 it's absolutely clear that these form what the Supreme
11 Court calls preconditions; that is, you've got to show
12 these things in order to bring a Section 2 results
13 claim involving vote dilution.

14 The first of these is you have to show that
15 the minority group on whose behalf the case is being
16 brought is sufficiently large and geographically
17 compact so as to form a majority in a fairly drawn
18 single-member district.

19 The second prong is that you have to show
20 that the minority group is politically cohesive.

21 And the third prong is that you have to show
22 that the majority population generally votes
23 sufficiently as a block so as to defeat the
24 minorities' candidate of choice.

25 Q. And is the issue of citizenship relevant to

1 any of the Gingles preconditions?

2 A. It is. It's most relevant to the first
3 pre-condition, which is showing that the minority
4 group is sufficiently large and geographically
5 compact. Now, in Gingles the Supreme Court just said
6 that the minority group had to be sufficiently large
7 and geographically compact.

8 The Supreme Court in a later case, Bartlett
9 against Strickland, elaborated on that and held that
10 you had to show that the minority group would be a
11 majority of the voters in the fairly drawn,
12 sufficiently compact district. And I'll just call
13 that the illustrative district because it's easier
14 because usually, if you're the plaintiff, you draw a
15 district to illustrate that you could satisfy
16 Gingles 1.

17 And so the Supreme Court, having said that it
18 was voters, majority voters rather than just total
19 population, lower federal courts have pretty uniformly
20 said that that means citizens of voting age because
21 you don't want to use actual voters since that would
22 penalize a minority community that has had difficulty
23 registering because they wouldn't already be a
24 majority of the voters even though potentially they
25 could be.

1 And so because at least with respect to
2 anything other than a very few number of local
3 elections only citizens can vote, you have to show
4 that a majority of the citizens of voting age are
5 members of the minority group on whose behalf you're
6 bringing the case. And that's what's called CVAP,
7 citizen voting age population.

8 And so that's where it's most relevant. I
9 mean it could theoretically be relevant to the other
10 two prongs, but as a practical matter, it really plays
11 no role there because those are looking at actual
12 voting behavior, and the actual voting behavior is
13 almost definitionally going to be the behavior of
14 citizens.

15 Q. Based upon your experience, can you explain
16 where Section 2 practitioners get their data to meet
17 the Gingles 1 precondition?

18 A. Well, they hire experts to do this sort of
19 data because lawyers are not trained directly to work
20 with the data. So the expert gets the data -- and you
21 just want to talk about Gingles 1 now, I take it?

22 Q. Right.

23 A. So for Gingles 1 the expert gets the data
24 from various publications of the census, Census
25 Bureau.

1 Q. And what publications are those?

2 A. So they get some of the data from the
3 decennial census numbers an --

4 MS. FEDERIGHI: Objection. Asking for
5 hearsay.

6 MR. ROSENBERG: Well, we can build an even
7 greater foundation just for the record.

8 Q. What is the basis for your understanding as
9 to where experts -- well, strike that.

10 In the course of your litigating Section 2
11 cases, have you worked with experts?

12 A. Yes, I have.

13 Q. And have you reviewed the reports of experts?

14 A. Yes, I have.

15 Q. And have you discussed with experts where
16 they get their information?

17 A. Yes.

18 Q. And based upon the work you've done in this
19 field, what is your understanding of where the experts
20 get their data?

21 MS. FEDERIGHI: Same objection.

22 MR. ROSENBERG: Objection noted.

23 THE WITNESS: So my understanding of where
24 the experts get their data is they get their data
25 from -- some of their data from the results of the

1 decennial census. Some of that stuff gets reported to
2 the states. There's a law that provides that the
3 census gives the information to the states and makes
4 public information that's broken down by political
5 subdivisions in various ways. And some of the data
6 comes from the American Community Survey now. They
7 used to come from the census long form.

8 BY MR. ROSENBERG:

9 Q. And a few minutes ago when you were talking
10 about your overall conclusions, I think you mentioned
11 a long form.

12 A. Yes.

13 Q. Do you also consider the ACS to be part of
14 what is sufficient for practitioners to prove cases?

15 MS. FEDERIGHI: Objection. Lack of
16 foundation.

17 THE WITNESS: Do I answer?

18 BY MR. ROSENBERG:

19 Q. Yes.

20 A. Yes. So here's the thing. For some of the
21 data that you need, both for Gingles and for, for
22 example, the fifth of the Senate report factors, which
23 goes into socioeconomic disparities and the like, some
24 of the -- you know, the census itself, the decennial
25 census gives you population figures, but if you want

1 more detailed information about the population, for
2 example, how many households have telephones, which is
3 relevant -- it was very relevant before the Internet.
4 Now, they also will tell you about the Internet, but
5 it's what we call the politically salient resource
6 because it tells you something about how easy or
7 difficult it is to get the vote out.

8 That information you get from the Bureau of
9 the Census, but you don't get it from the short form
10 that goes to every household. You get it from survey
11 data. Used to be surveys that were called the long
12 form, which were sent out, I think it was like one in
13 six households. And now it's from something called
14 the "American Community Survey," which is a survey
15 that's sent out every year, and generally, for our
16 purposes, you use the five-year kind of aggregate of
17 data from that.

18 Q. In your scholarship, have you reviewed
19 articles by other Section 2 practitioners concerning
20 Gingles 1 preconditions?

21 A. By people who practice?

22 Q. Yes.

23 A. Yes. But most of them are by people who are
24 primarily scholars.

25 Q. And in that scholarship, has there been

1 reference to reliance on ACS by experts in the field?

2 A. Yes.

3 MS. FEDERIGHI: Objection.

4 BY MR. ROSENBERG:

5 Q. In your scholarship, have you come across any
6 writings by either practitioners or experts in the
7 field of Section 2 vote dilution litigation discussing
8 the need for more accurate CVAP data than that is
9 provided by ACS?

10 MS. FEDERIGHI: Objection.

11 THE WITNESS: Do I answer?

12 BY MR. ROSENBERG:

13 Q. Sure.

14 A. No, I have not.

15 Q. In your experience, have you attended
16 conferences where Section 2 practitioners and experts
17 discuss issues relating to Section 2 vote dilution
18 litigation?

19 MS. FEDERIGHI: Objection.

20 THE WITNESS: I have.

21 BY MR. ROSENBERG:

22 Q. And approximately how many such conferences
23 have you attended?

24 A. How many conferences have I attended?

25 Q. Uh-huh.

1 A. Well, I would say on average it would be at
2 least one a year, in part because the Civil Rights
3 Training Institute that the NAACP Legal Defense Fund
4 puts on virtually always has a session on voting
5 rights and vote dilution.

6 MR. ROSENBERG: By the way, since this is a
7 preservation deposition, I think you do have to put
8 your -- the basis for your objection on the record.

9 MS. FEDERIGHI: Okay. The previous few were
10 hearsay, calls for hearsay.

11 BY MR. ROSENBERG:

12 Q. And have the discussions in those conferences
13 included discussions on issues relating to proving
14 Section 2 claims?

15 A. Yes.

16 MS. FEDERIGHI: Objection. Calls for
17 hearsay.

18 THE WITNESS: Yes, they have.

19 BY MR. ROSENBERG:

20 Q. And including meeting the Gingles
21 preconditions?

22 MS. FEDERIGHI: Objection. Calls for
23 hearsay.

24 THE WITNESS: Yes, they have.

25 BY MR. ROSENBERG:

1 Q. Including meeting Gingles 1?

2 MS. FEDERIGHI: Objection. Calls for
3 hearsay.

4 THE WITNESS: Yes, they have.

5 BY MR. ROSENBERG:

6 Q. And, again, in any of those discussions have
7 you heard any mention of a need for more accurate CVAP
8 data than that provided by ACS?

9 MS. FEDERIGHI: Objection. Calls for
10 hearsay.

11 THE WITNESS: No, I have not.

12 MR. ROSENBERG: And just for the record,
13 obviously we do not believe any of this is hearsay,
14 and certainly not inadmissible hearsay even if it
15 could be considered hearsay.

16 Q. In any -- by the way, based on your
17 experience, would you have expected there to be some
18 mention of a problem as to the inaccuracy of data
19 by -- at these conferences?

20 MS. FEDERIGHI: Objection. Lack of
21 foundation.

22 THE WITNESS: So here's the thing. Over the
23 course of the evolution of voting rights law from
24 Gingles forward, there have been many discussions of
25 difficulties of showing various aspects of either

1 Gingles, the Gingles factors or the Senate report
2 factors or the like. So I would expect if people were
3 having trouble out in the field actually proving up
4 their cases, because of a problem with either long
5 form data or ACS data, we would have heard about that,
6 and I never heard anybody say that was the problem
7 they were having in winning a case.

8 BY MR. ROSENBERG:

9 Q. Was it typical for practitioners and experts
10 to discuss other problems that were arising in terms
11 of proving Section 2 cases at these conferences?

12 MS. FEDERIGHI: Objection. Calls for
13 hearsay.

14 THE WITNESS: Yes. We had, for example,
15 numerous discussions over the years about the various
16 methodologies for trying to estimate the race of
17 individual voters in voter ID cases. There were lots
18 of discussions about the different methods of trying
19 to figure out racial block voting because one of the
20 ways that political scientists starting out estimating
21 it often produced -- because what you were doing was
22 you were taking essentially a scatter plot and then
23 trying to draw a line through it. You would get
24 predictions that over 100 percent of the African
25 Americans were voting for the African American

1 candidate, or less than zero percent of the White
2 voters were voting for the White candidate.

3 So there were discussions about, "Well, how
4 did you deal with that," and I just -- you know, I
5 remember discussions about terms that I could barely
6 pronounce, and the experts would be talking about why
7 you had to worry about heteroscedasticity, for
8 example, a word that I still have no idea exactly what
9 it means.

10 BY MR. ROSENBERG:

11 Q. Wait until you have to explain that to the
12 reporter.

13 A. Yeah. I had no -- it must mean other
14 scedasticity as opposed to homoscedasticity. So,
15 yeah, there were lots of discussions about, you know,
16 what kinds of experts you needed, what the experts
17 could or couldn't do, but I was never present at one
18 where somebody said, "My problem in meeting Gingles 1
19 is I just can't show that the minority group is
20 sufficiently numerous."

21 Q. In your years as a private practitioner
22 bringing Section 2 vote dilution cases, have you been
23 involved in discussions as to issues relating to
24 Section 2 vote dilution litigation?

25 A. Yes.

1 Q. With fellow petitioners?

2 A. Yes.

3 Q. With experts?

4 A. Yes.

5 Q. Have the discussions in those conferences
6 included discussions on issues relating to proving
7 Section 2 claims?

8 MS. FEDERIGHI: Objection. Calls for
9 hearsay.

10 THE WITNESS: Yes, I have.

11 BY MR. ROSENBERG:

12 Q. Including Gingles preconditions?

13 MS. FEDERIGHI: Objection. Calls for
14 hearsay.

15 THE WITNESS: Yes.

16 BY MR. ROSENBERG:

17 Q. And including meeting Gingles 1?

18 MS. FEDERIGHI: Objection. Calls for
19 hearsay.

20 THE WITNESS: Yes.

21 BY MR. ROSENBERG:

22 Q. In any of those discussions, has there ever
23 been mention of the need for more accurate data as to
24 CVAP for the purposes of meeting Gingles 1 then as
25 provided by ACS?

1 MS. FEDERIGHI: Objection. Calls for
2 hearsay.

3 THE WITNESS: There's never been a discussion
4 of the need for more. I should say at the most recent
5 conference I was at there was a discussion about the
6 Gary letter and the Census Bureau's plan to add a
7 citizenship question to the 2020 short form. There
8 was not a discussion -- there was no belief among the
9 people who were discussing this that it was necessary
10 to do so, but there was a discussion of the claim that
11 there was a need to do so.

12 BY MR. ROSENBERG:

13 Q. In your years at DOJ, were you involved in
14 discussions as to issues relating to Section 2 vote
15 dilution litigation?

16 MS. FEDERIGHI: Objection. Calls for
17 hearsay.

18 THE WITNESS: I think that would be -- I'm
19 not sure whether that's privileged.

20 BY MR. ROSENBERG:

21 Q. Well, I'm just asking if you were involved in
22 discussions.

23 A. Yes, I was involved in discussions.

24 Q. In any of those discussions, was there any
25 mention of the need for more accurate data as to CVAP

1 for purposes of meeting Gingles 1 than as provided by
2 ACS?

3 MS. FEDERIGHI: Objection. Calls for
4 privileged communications and hearsay.

5 THE WITNESS: I can't answer.

6 MR. ROSENBERG: And I assume DOJ won't waive
7 the privilege?

8 MS. FEDERIGHI: No. No.

9 MR. ROSENBERG: Okay.

10 Q. While you were at DOJ, were you involved in
11 any discussions as to census-related issues?

12 MS. FEDERIGHI: Objection. Calls for hearsay
13 and privileged material.

14 MR. ROSENBERG: Okay. And, again, you will
15 not waive the privilege?

16 MS. FEDERIGHI: Yeah.

17 BY MR. ROSENBERG:

18 Q. Okay. Based upon your experience, what is
19 your opinion as to why there has not been mention of
20 the need for more accurate CVAP data than as provided
21 by ACS in the various discussions that you've had?

22 MS. FEDERIGHI: Objection. Calls for
23 speculation.

24 BY MR. ROSENBERG:

25 Q. Based upon your experience.

1 A. Based on my experience, people have been
2 successful in Section 2 cases with the data they have,
3 and the cases that are not being brought are not being
4 brought because people don't think there are enough
5 minority voters in the jurisdiction or they don't
6 think that the racial block voting is sufficiently
7 provable, or they don't think they could draw a
8 district at the end of the day.

9 It's not because they think the people are
10 out there and just haven't been found by the ACS, if
11 you will.

12 Q. Is CVAP data necessary to prove Gingles 1 in
13 every sort of Section 2 case?

14 A. I mean, technically, yes, but as a practical
15 matter, there are a number of cases where you don't
16 really need it because nobody is contesting that the
17 voting age population is made up almost entirely of
18 citizens. So, for example, in most voting rights
19 cases where the plaintiff class is Native American,
20 all you need is VAP, the voting age population,
21 because nobody suggests, for example, that there are a
22 lot of Navajo who aren't U.S. citizens or a lot of,
23 you know -- or there are a lot of tribes up in
24 South Dakota with vote dilution cases, and nobody
25 suggests that they're not citizens.

1 So if you have the VAP, you basically almost
2 definitionally have the CVAP as well.

3 The same thing is true in at least all of
4 that vote dilution cases of which I'm aware involve
5 African Americans. The citizenship rate among African
6 Americans in the United States is slightly higher than
7 the citizenship rate of the overall population, and
8 therefore, thereto, if you're in Mississippi and you
9 show that 55 percent of the VAP in, say, DeSoto County
10 is black, nobody is going to say, "But most of those
11 folks are probably West Africans who've only just
12 recently arrived.

13 So there too you don't really see an issue of
14 VAP versus CVAP. The place where you see it is
15 obviously in the Latino community where there's a
16 substantial number of noncitizens in areas where you
17 might expect to see voting rights litigation.

18 Q. Are there other categories of cases where you
19 would think that the issue of CVAP would not be
20 important to practitioners in the field?

21 A. Well, I'm not sure exactly what you're
22 asking.

23 Q. Let me ask you -- let me just change tack a
24 little.

25 Are you familiar with the concept of

1 performing districts?

2 A. Yes, I am.

3 Q. And how does that play into the issue of
4 citizenship and Section 2 vote dilution cases?

5 A. So a performing district is a district that
6 on election day is going to perform for the minority
7 community. That is where the minority community is
8 likely to be able to elect a candidate of its choice
9 on election day. So when you think about a performing
10 district, you are really thinking about on election
11 day what is the turnout going to look like. How many
12 minority citizens are going to turn out to vote. How
13 many nonminority citizens are going to turn out to
14 vote.

15 What's the block voting level, the level of
16 polarization in the jurisdiction, and that's what
17 you're looking at when you're thinking about
18 performing districts.

19 Q. So is there any relationship between that
20 concept and the need for citizenship data?

21 A. There's a theoretical need between the two
22 which is, of course, the only people who can vote are
23 citizens, and so almost by definition, you are looking
24 at citizen voting. But once you're looking at actual
25 election data, the need for trying to estimate who the

1 citizens are or aren't kind of drops out of the
2 picture because you know who they are. They're the
3 ones who are voting.

4 So the turnout is a subset of the citizens of
5 voting age.

6 Q. Is it typical for practitioners in your field
7 to bring Section 2 vote dilution cases where there's a
8 very close call as to whether there is -- you're able
9 to meet Gingles 1?

10 MS. FEDERIGHI: Objection. Lack of
11 foundation.

12 THE WITNESS: I mean you might bring a case
13 that's close, but it's close once you take into
14 account the performance, the likely performance of the
15 districts.

16 So, for example, in a place where you don't
17 have -- where you have legally significant but not
18 overwhelming racial polarization in the electorate,
19 you might bring a case where the number to satisfy
20 Gingles 1 is not hugely over 50 percent because you
21 know that some share of the White population will vote
22 for the minority's candidate of choice.

23 BY MR. ROSENBERG:

24 Q. Based upon your experience, is it typical for
25 private practitioners to bring cases that are close in

1 terms of proving Gingles 1?

2 A. I mean so if you mean by "close" -- there are
3 two different ways you might mean "close," and I want
4 to distinguish between them. One is where the
5 Gingles 1 number is close to 50 percent.

6 Q. That's -- let's start with that one.

7 A. So the answer to that is yes. So there are
8 lots of cases where the plaintiffs illustrative
9 district, for example, will be 52 percent citizens of
10 voting age. So in that sense it looks like a close
11 case because it's close to the line at which the
12 Supreme Court would say, "You lose."

13 That's different than asking whether people
14 are going to bring a lot of cases where they think
15 it's not really clear that at the end of the day they
16 can get a remedy that will enable the minority to
17 elect candidates of their choice. In general, people
18 don't have the resources to bring those cases.

19 So if you think, for example, that there's
20 absolute polarization, that is, 100 percent of the
21 minority community will vote for the minority
22 community's candidate of choice and zero percent of
23 the majority will vote for the minority's candidate of
24 choice. So the way people sometimes refer to this,
25 Blacks vote Blacks, Whites vote White.

1 You would not bring that case if, with regard
2 to Gingles 1, you could show only that 50 percent plus
3 1 of the voters are Black. I mean technically that
4 would satisfy Gingles 1, but then what you know is if
5 turnout rates are higher among the White community
6 than among the Black community, that district will
7 never perform for the black community. So there's no
8 point in bringing that lawsuit because the remedy
9 doesn't get you anything. The Black community will
10 still be politically shut out.

11 Q. Based on your experience, have plaintiffs
12 been successful in bringing Section 2 vote dilution
13 cases based on the CVAP data provided by ACS, and
14 prior to that, the long form survey?

15 A. Yes, they've been very successful. I mean
16 there's a book called "Quiet Revolution in the South"
17 that talks about how the Voting Rights Act just
18 transformed who got elected to state and local office
19 and in Congressional districts.

20 Q. And in connection with your work on this
21 case, have you studied Section 2 vote dilution cases
22 brought by other practitioners and brought by
23 yourself?

24 A. Yes. Yes, I have.

25 Q. And did you review both favorable and

1 unfavorable cases or successful and unsuccessful
2 cases?

3 A. Yes, I did.

4 Q. Do you recall approximately how many
5 successful cases you reviewed?

6 A. Well, if by "reviewed" you mean how many did
7 I read, read the opinion where the court finds
8 liability?

9 Q. How many did you consider in connection with
10 your conclusions, understanding that you may not have
11 read every one of them?

12 A. So on the successful case side, I relied on
13 studies that have been done that kind of add up the
14 successful cases. The two leading ones are the
15 National Commission on Civil Rights, and a study that
16 was done by some folks at the University of Michigan.
17 Those studies kind of just surveyed the landscape of
18 successful cases in conjunction with the re-enactment
19 of Section 5 in 2006.

20 And those studies found, I think it was like
21 117 reported Section 2 cases finding liability and
22 then estimated that there were roughly 10 times that
23 in terms of unreported cases.

24 MS. FEDERIGHI: I'm just going to object on
25 the basis of outside the scope of her opinion.

1 MR. ROSENBERG: I don't think so.

2 THE WITNESS: Well, I talk about this in
3 my --

4 MS. FEDERIGHI: You talked about one study.
5 I just don't remember two studies. I may be mistaken.

6 THE WITNESS: If you look at Page 6 --

7 MR. ROSENBERG: May I suggest that since this
8 is a trial preservation deposition, if you're having a
9 problem with that, you can deal with it on
10 cross-examination.

11 MS. FEDERIGHI: Okay.

12 MR. ROSENBERG: And we can take a break and
13 maybe, perhaps, to clear it up so we don't have to
14 devote unnecessary time to it.

15 MS. FEDERIGHI: Okay.

16 THE WITNESS: I can clarify, if that would be
17 helpful, which is on Page 6 of my report I talk about
18 the Ellen Katz study, which was the initial one that
19 found 117 cases in the 23-year period in which the
20 results test was operating. That is from 1982
21 forward.

22 And then the national commission, which I
23 discuss their report, which is -- was made part of the
24 hearings in the 2006 reauthorization as saying that
25 they estimated that there were approximately 10 times

1 the number of unreported cases as reported ones in the
2 jurisdictions that were covered by Section 5, which is
3 the south, primarily, and southwest.

4 MR. ROSENBERG: Just for the record, that
5 exact phrase appears on Page 7, the second full
6 paragraph, it found "approximated 10 times the number
7 of" unreported cases as reported ones.

8 MS. FEDERIGHI: I'm going to object to the
9 extent you're reading from the report.

10 MR. ROSENBERG: Well, you raised the issue.

11 Q. Did you also look into cases that were
12 unsuccessful?

13 A. Yes, I did.

14 Q. Based upon your review, were any of them
15 unsuccessful because the ACS data was insufficient to
16 prove Gingles 1?

17 A. No. I looked at 24 cases, which appear in
18 Appendix C of my report. I found 24 cases where
19 people lost in reported decisions, that is, decisions
20 I could find, on Gingles 1 grounds, and in none of
21 those cases was the reason they lost that the ACS data
22 or the long form data were insufficient to satisfy
23 Gingles 1. The reasons they lost were things like
24 they admitted that they couldn't satisfy the CVAP
25 criteria because there are a number of cases that are

1 decided at the time that the courts were moving from
2 total population to CVAP as the number -- as the
3 number for which you needed 50 percent plus one.

4 There were cases where people couldn't draw
5 compact districts because, for example, you know, if
6 you were kind of giving somebody an example of this,
7 if you look at a checker board, there might be equal
8 numbers of black and white squares on the checker
9 board, but it would be very hard to connect the black
10 squares in any way that would make it look compact.

11 There were cases where the plaintiffs just
12 failed even to put in an illustrative district. They
13 just didn't bother to try to satisfy Gingles 1 the way
14 Courts want you to, which is show me a district. So
15 those are all cases where plaintiffs failed on
16 Gingles 1 grounds but they didn't fail because the ACS
17 was inadequate or the long form, for the cases prior
18 to that.

19 Q. Based upon your reading of the Gary letter,
20 did the Gary letter identify any cases where
21 inadequate CVAP data caused the plaintiff to lose a
22 Section 2 vote dilution case?

23 A. Yes. I guess I should say they did not
24 identify any cases where inadequate CVAP data, by
25 which I mean not enough data was there. There are

1 some cases where inadequate, if what you mean is not
2 enough citizens of minority, citizens -- minority
3 citizens of voting age.

4 Q. Let me reframe the question.

5 Based upon your reading of the Gary letter,
6 did it set forth any cases where the inaccuracy of ACS
7 or the inadequacy of ACS as data as opposed to the
8 amount of numbers, you know, the size of numbers --

9 A. Right.

10 Q. -- cause the plaintiffs to lose a case?

11 A. No, they did not. That is, they didn't
12 identify any cases that they thought would have been
13 won had there been an actual enumeration of citizens
14 of voting age but were lost because people relied on
15 the ACS instead.

16 Q. Are you aware of any case in which a lack of
17 CVAP data from the decennial questionnaires caused a
18 potential plaintiff not to bring a case?

19 A. No, I am unaware of any such case.

20 Q. Do you have an opinion as to why there are no
21 cases of which you are aware in which a lack of CVAP
22 data from the decennial questionnaires could cause a
23 plaintiff to lose a case he would otherwise win?

24 A. Could you restate that question.

25 Q. Sure.

1 A. I want to make sure I get all the pieces.

2 Q. Do you have an opinion as to why there are no
3 cases of which you are aware where plaintiffs needed
4 CVAP data from the decennial questionnaire in order to
5 win a Section 2 vote dilution case?

6 A. Yes, I have an opinion on this. So I guess
7 there are two pieces to the opinion. One is that the
8 data that they do have access to, initially the long
9 form and now the ACS data, that data -- those data are
10 adequate to meet the Gingles 1 threshold. Courts have
11 repeatedly allowed people to use that data. So they
12 don't have the problem of the Court saying, "You don't
13 have any data to show me."

14 The second reason is a reason that has to do
15 with the fact that for a lot of things, estimates are
16 actually more accurate than actual numbers, and the
17 reason for this is what's referred to as the "under
18 count." And it's a differential under count; that is,
19 more African Americans or more Latinos than Anglo
20 Whites don't get picked up despite the best efforts of
21 the census in the actual enumeration.

22 And so at least what my experts have
23 testified to is that the estimates give a better
24 actual picture of CVAP than would be captured by a
25 question on the actual enumeration.

1 Q. Based upon your experience, if there were
2 data from ACS as to a certain percentage of CVAP and
3 data from a decennial questionnaire as to certain
4 percentage of CVAP, which is likely to be higher?

5 MS. FEDERIGHI: Objection. Calls for
6 speculation. Outside the scope of the expert report.

7 THE WITNESS: With one exception, the ACS
8 data are more likely to be accurate. The one
9 exception is -- and I'll give a concrete historical
10 example of this.

11 The decennial census occurs on Date X. It's
12 April 1 of the year ending in zero. So the one place
13 where the ACS would give you a lower estimate than the
14 census is if you've had tremendous geographic shift
15 and depopulation of the minority community. So, for
16 example, my guess is that if you took the census and
17 compared that to the population of New Orleans after
18 Katrina, ACS would give you a lower number than the
19 census would give you because huge numbers of African
20 Americans left New Orleans and did not return.

21 But in general, leaving aside catastrophes
22 like that, the ACS will give you a higher estimate of
23 the CVAP than you would get if you had done this as
24 part of the census because of the under count issue.

25 BY MR. ROSENBERG:

1 Q. Are there -- are you familiar with the
2 concept of one-person, one-vote?

3 A. Yes, I am.

4 Q. Can you explain what that concept is?

5 A. So it's a little bit of a misnomer because
6 one-person, one-vote is the shorthand for the
7 Constitutional requirement that the Supreme Court
8 announced during the reapportionment revolution in the
9 early 1960's that electoral districts for anything
10 other than judicial elections. So let's leave those
11 aside for a second.

12 But electoral districts for anything else,
13 Congressional districts, state legislative districts,
14 city council districts, school board districts and the
15 like, the districts have to be drawn with relatively
16 equal populations in them so that each of the
17 districts, depending on whether it's a Congressional
18 district where it has to be as close as you can get
19 it, or a state legislative district or a city council
20 district where there's a 10 percent deviation, you
21 look at the total populations of the districts and
22 they have to be roughly the same.

23 And that's why I say it's a misnomer because
24 it's not that you have to have equal numbers of voters
25 in the districts. It's that you have to have equal

1 numbers of people in the districts, which includes
2 children who obviously can't vote. People who are
3 disenfranchised for mental incapacity or in many
4 places because they're incarcerated, can't vote.
5 Noncitizens can't vote, but they get counted in the
6 one-person, one-vote apportionment basis.

7 Q. And what is your understanding as to how the
8 one-person, one-vote calculation is arrived at? What
9 database do experts use?

10 MR. FEDERIGHI: Objection. Lack of
11 foundation.

12 BY MR. ROSENBERG:

13 Q. Based on your experience.

14 A. Well, it depends on at what stage of the
15 process. So federal law requires that for the
16 apportionment of seats in Congress, that is House of
17 Representative seats, the actual enumeration without
18 any adjustments has to be used. There's a federal law
19 that says that.

20 For everything else, the jurisdiction is
21 essentially free to use any reasonable base. Some of
22 them use the actual population. Some of them use
23 estimates. There's not a federal Constitutional
24 constraint.

25 Q. Are there any benefits to using the same

1 database for one-person, one-vote requirement and for
2 Gingles 1 precondition?

3 A. Well, there's the benefit that it looks nice
4 to do it, but there's not any necessary reason that
5 you would have to do it because for one, you're
6 concerned with the total population, and for the other
7 you're concerned with the citizens of voting age. And
8 so you don't need to use the same number for both.

9 Q. By the way, are you -- is it your opinion
10 that there is absolutely no conceivable circumstance
11 under which data from a citizenship question could be
12 used in a Section 2 vote dilution case?

13 A. No, it's not that there's no conceivable
14 circumstance under which you could use it. The
15 question that I was asked to opine on was whether it
16 would materially aid. As a practical matter, are
17 there cases that plaintiffs could bring and win if
18 they had that data that they can't bring and win now.
19 And as to that, I don't think there are such cases.

20 As to whether conceivably you might want to
21 know that number for any one of a variety of reasons,
22 sure.

23 MR. ROSENBERG: I would pass the witness to
24 either California or Maryland. We can take a break.

25 THE VIDEOGRAPHER: The time is 10:08 a.m.

1 This completes Media Unit No. 1. We're now off the
2 record.

3 (A recess was taken from 10:08 a.m.
4 to 10:31 a.m.)

5 THE VIDEOGRAPHER: The time is 10:31 a.m.
6 This begins Media Unit No. 2. We're now on the
7 record.

8 Please proceed, Counsel.

9 MR. ROSENBERG: I do have just one area I
10 want to revisit because of the privilege objection
11 that you made. And what I'd like to do is I'm going
12 to read into the record from the October 25, 2018
13 depositions of Professor Karlan, Page 20, beginning on
14 Line 22.

15 THE WITNESS: May I look at mine while you're
16 doing this?

17 MR. ROSENBERG: Sure.

18 MS. FEDERIGHI: I'm going to object on the
19 grounds of hearsay.

20 MR. ROSENBERG: Sure. I understand your
21 objection. We disagree because it's not hearsay, but
22 beyond that, it's actually Page 20, Line 15. A
23 question by Ms. Federighi. So turning to Page 4 of
24 your report, I'm looking at the fourth paragraph
25 answer from Dr. Karlan:

1 "A. The one that
2 begins: In particular?

3 "Q. In particular,
4 yes.

5 "A. Yes.

6 "Q. I'm going to start
7 with the third -- the
8 second sentence.

9 "A. Yes.

10 "Q. That says:
11 'I was also aware of
12 ongoing discussions
13 between career staff and
14 the counterparts at the
15 Census Bureau over
16 preparation for the
17 2020 enumeration.'
18 Can you explain what
19 those discussions
20 entailed?

21 "Q. Are you -- I
22 would have assumed
23 those discussions are
24 privileged. Are you
25 asking me to tell you

1 what happened?

2 "Q. Oh, well, is
3 that something that
4 you are going to
5 testify about at trial?

6 "A. No, because
7 unless you waive the
8 privilege for the
9 Department of Justice,
10 I can't."

11 THE WITNESS: Mr. Rosenberg then says:

12 "MR. ROSENBERG: Let
13 me just, just to be clear,
14 she's going to be
15 testifying in
16 accordance with this
17 sentence that she was
18 aware of discussions.

19 "MS. FEDERIGHI: Umm-umm.

20 "MR. ROSENBERG: And
21 if the Department of
22 Justice is willing to
23 waive privilege as to
24 the substance of the
25 discussions, other than

1 the fact that nothing was
2 said concerning the
3 citizenship question,
4 which she is going to
5 testify to, I think -- I
6 think Ms. Karlan would
7 be happy to testify.

8 "MS. FEDERIGHI: Well,
9 let me get at it this way.

10 "Q. Was -- were any
11 of the discussions -- you
12 said they don't -- didn't
13 involve a citizenship
14 question.

15 "A. That's correct.

16 "Q. Does that mean they
17 also did not say: We
18 don't need a citizenship
19 question?

20 "A. There was no
21 discussion of the need or
22 lack of need for a
23 citizenship question.

24 "Q. Okay. And what --
25 so these discussions

1 would have occurred in
2 the 2014 to 2015
3 timeframe; correct?

4 "A. That's correct."

5 MR. ROSENBERG: And that's the end of the
6 excerpt.

7 Q. So my question, Professor Karlan, is that
8 still your testimony today?

9 A. Yes, it is.

10 MR. ROSENBERG: I think that's all I have.

11 Thank you.

12 And I pass the witness.

13

14 EXAMINATION

15 BY MR. DUKE:

16 Q. Good morning, Professor Karlan.

17 A. Good morning.

18 Q. As you know, I'm Ben Duke, and I represent
19 the Kravits plaintiffs in the -- one of the other
20 citizenship question cases that is currently pending
21 in the District Court of Maryland.

22 You answered a number of questions about
23 discussions that you've had at conferences and with
24 other lawyers about issues involved in meeting the
25 Gingles proof requirements. Do you recall those? Do

1 you recall that testimony?

2 A. Yes, I do.

3 Q. And I just want to clarify the foundation for
4 the opinion or opinions that you're offering in that
5 regard. And with apologies for any overlap with any
6 testimony, have you personally litigated Section 2
7 cases under Section 2 of the Voting Rights Act?

8 A. Yes, I have personally litigated those cases.

9 Q. And have you worked at the Department of
10 Justice in particular with responsibilities for
11 enforcement of Section 2 of the Voting Rights Act
12 through litigation?

13 A. Yes, I did.

14 Q. And have you written scholarly articles and
15 books on the enforcement of Section 2, the Voting
16 Rights Act in general?

17 A. Yes, I have.

18 Q. And with regard to the conferences that you
19 discussed earlier, just to be clear, have you
20 personally attended conferences on an annual or even
21 more frequent basis over the last decades involving
22 the Voting Rights Act, and particularly, enforcement
23 of Section 2?

24 A. Yes, I have.

25 Q. And are you personally familiar with the

1 topics of presentation and panel conferences or the
2 like that are set, organized, and held in the context
3 of those conferences?

4 A. I'm not sure what you mean by am I personally
5 familiar. So sometimes I appear on the panels,
6 discussing the issues. Sometimes I'm in the audience
7 listening to the discussions. Is that what you're
8 asking?

9 Q. Yes. Is it fair to say that you are an
10 active participant in those conferences and are
11 familiar with the kinds of issues and topics that are
12 raised or that are the focus of attention at those
13 conferences?

14 A. Yes, I am.

15 Q. And based on all of that experience as an
16 expert in the Voting Rights Act enforcement field, do
17 you have an opinion as to whether the adequacy of
18 existing sources of citizenship data is a significant
19 issue or challenge in the enforcement of Section 2 of
20 the Voting Rights Act?

21 A. I have an opinion, and my opinion is that
22 existing sources are entirely adequate for plaintiffs
23 to bring and to win voting rights cases.

24 Q. And I think you testified with reference to
25 the Gary letter, which is the DOJ letter conveying the

1 request to the Department of Commerce or the Census
2 Bureau for the addition of a citizenship question to
3 the decennial 2020 census; is that correct?

4 A. Yes, I am.

5 Q. And based on your review of the Gary letter,
6 was there anything in the Gary letter that changed or
7 affected your opinion, the opinion that you just
8 provided?

9 A. Well, I was asked to form the opinion after
10 reading the Gary letter. So I didn't have a
11 pre-existing opinion on the Gary letter. Nothing in
12 the Gary letter changed my sense that -- as to what
13 plaintiffs need in order to prevail in voting rights
14 cases. That is, before the letter, I assumed, because
15 my experience showed me this, that the existing
16 sources of data were fully adequate for people to
17 bring and to win Section 2 cases. Nothing in the Gary
18 letter changed my opinion that the existing sources of
19 data were sufficient to enable plaintiffs to bring and
20 to win Section 2 cases.

21 MR. DUKE: Thank you. That's all I have.

22 ///

23 ///

24 ///

25 ///

EXAMINATION

BY MS. FEDERIGHI:

Q. Good morning, Professor Karlan.

A. Good morning.

MS. FEDERIGHI: Before I get into asking you some questions, I just want to address one administrative matter that we just discussed off the record -- I discussed with plaintiff's counsel.

I just want to make clear that we are observing all our rights to object to the admission of any exhibits that we've talked about here today into the trial record, and I'm also -- we also -- defendants also reserve their rights to object to the admission of the testimony as a whole.

MR. ROSENBERG: And, obviously, if any plaintiff decides to put into evidence either all or a portion of the testimony here or any exhibits, we all reserve our rights on that and our rights to respond to whatever you assert at the time.

MS. FEDERIGHI: Understood. Okay.

Q. Now, Professor Karlan, you've provided an opinion on whether a citizenship question on the decennial census would assist the Department of Justice's enforcement of Section 2 of the Voting Rights Act; correct?

1 A. Yes.

2 Q. And you concluded that it would not; correct?

3 A. That's correct.

4 Q. In litigating what you've called "vote
5 dilution cases" citizenship information is most
6 important for the first Gingles precondition; right?

7 A. Yes.

8 Q. And that first precondition is whether the
9 minority group is sufficiently large and
10 geographically compact to constitute a majority in a
11 single member district; correct?

12 A. Yes.

13 Q. Now, you agree with the Gary letter that
14 multiple courts have held that where citizenship rates
15 are at issue, citizen voting age population is the
16 proper metric for determining whether there's a
17 representative district where a minority would
18 constitute a majority; is that correct?

19 A. Yes.

20 Q. And you agree, therefore, that the Department
21 of Justice or any other plaintiff needs a reliable
22 calculation of the citizenship voting age population
23 in localities where citizenship is at issue and where
24 voting rights are alleged or suspected to be violated;
25 correct?

1 A. Yes.

2 Q. And in some cases a plaintiff would need
3 access to citizenship level at the -- citizenship data
4 at the block level; correct?

5 A. Yes.

6 Q. And you're aware that the American Community
7 Survey only provides estimates down to the block group
8 level; correct?

9 A. That's correct.

10 Q. So you agree with the Gary letter that Voting
11 Rights Act plaintiffs are required to perform further
12 estimates in order to approximate citizen voting age
13 population at the level of a census block where that
14 level of data is necessary in the current regime;
15 correct?

16 A. Yes. Where data down to that level is
17 necessary, yes, they do need to perform some
18 estimates.

19 Q. Okay. You're not a statistician; correct?

20 A. That's correct.

21 Q. And you're also not a demographer; correct?

22 A. That's correct.

23 Q. Now, you said when you were at DOJ you were
24 recused from working on the Abbott vs. Paris case; is
25 that correct?

1 A. Yes.

2 Q. That was the only really active,
3 straightforward vote dilution case being litigated at
4 the time where the U.S. was a party; correct?

5 A. That's correct.

6 Q. And being recused, that means you weren't
7 allowed to talk to anyone at DOJ about the case;
8 correct?

9 A. That's correct.

10 Q. And you weren't -- so you weren't aware of
11 the subject of any discussions within DOJ about the
12 case; correct?

13 A. That's correct.

14 Q. Now, Professor Karlan, you don't have an
15 opinion on whether ACS data on citizenship is better
16 or worse than data from the long form questionnaire,
17 do you?

18 A. No, I do not.

19 Q. Voting Rights Act law is different now than
20 it was at the time of Gingles in 1986; correct?

21 A. That's correct.

22 Q. And so that means that over time the courts
23 have modified what plaintiffs have to show to make
24 their case; correct?

25 A. That's correct.

1 Q. In your experience, litigating Section 2
2 Voting Rights Act cases, you rely on social scientists
3 to draw representative districts -- or illustrative
4 districts -- that's what you called them -- for the
5 purposes of the first Gingles precondition; correct?

6 A. Generally, yes. I had some cases in Alabama
7 that involved various small jurisdictions where we
8 actually relied on community members to draw the
9 districts as opposed to social scientists, but
10 generally that would be correct.

11 Q. So generally you do not physically draw the
12 districts yourself; correct?

13 A. That's correct, yes.

14 Q. And you did not yourself obtain the raw data
15 that's used to derive the districts; correct?

16 A. That's correct.

17 Q. You leave it up to the experts whether they
18 need to obtain block-level citizenship data to draw an
19 illustrative district; is that correct?

20 A. That's correct.

21 Q. And you're not aware of how they go about
22 calculating such data; correct?

23 A. That's correct.

24 Q. So you wouldn't know if there were any
25 problems or limitations in the data unless the social

1 scientists brought it to your attention; correct?

2 A. That's correct. They would bring it to my
3 attention if they were having trouble coming up with a
4 district. So, for example, in the Dillard cases
5 the --

6 Q. Well, let me --

7 A. Sure.

8 Q. You said they would bring it to your
9 attention if there was a problem. Do you know that
10 for a fact, or is that just an assumption?

11 A. Well, it's an assumption because I need to
12 know what I'm going to get up in court and argue and
13 how I'm going to brief the case.

14 Q. But, in fact, you don't really care what
15 actual number they come up with that is the percentage
16 of CVAP in the representative districts; correct?

17 A. No, that's incorrect. I do care what number
18 they come up with because I don't want -- for example,
19 if the case goes to trial rather than settle, I don't
20 want the other side to come in and say they've got the
21 wrong number. So I care that they get a correct
22 number.

23 Q. You don't care what the number is; is that
24 correct?

25 A. Well, I care what the number is because I

1 want the number to be a correct number, and I want it
2 to be a number that will enable us both to satisfy
3 Gingles 1, and to ultimately, if push comes to shove,
4 argue for a performing district.

5 Q. Do you remember giving a deposition when I
6 took your deposition in this case?

7 A. Yes.

8 Q. And in taking -- in giving that deposition,
9 did you swear to tell the truth?

10 A. I did.

11 Q. And you did tell the truth, didn't you?

12 A. I did.

13 Q. Okay. I'm looking at Page 84 of your --

14 A. May I look at that page?

15 Q. Of course.

16 A. Thank you.

17 Q. 84, starting on Page 14.

18 A. Page 84, Line 14.

19 Q. Line 14, yes. Excuse me.

20 A. Yeah. Line 16 on Page 84. You're saying
21 that there is -- "Why is there no error" --

22 Q. Yeah. I'll read it.

23 A. I'm just trying to make sure.

24 Q. The question -- and there was some
25 preliminary to what I was talking about a possible

1 chart. And then I said on Line 16:

2 "Q. You're saying
3 that there is -- why
4 is there no errors
5 stated with those
6 charts?"

7 MS. FEDERIGHI: And Mr. Rosenberg inserted an
8 objection and then -- do you want me to read that,
9 Ezra?

10 THE WITNESS: Yeah.

11 MR. ROSENBERG: I think you should read
12 the --

13 MS. FEDERIGHI: Okay. Mr. Rosenberg said:

14 MR. ROSENBERG: I'm
15 sorry. I have to object as
16 to form. When you're talking
17 charts you've seen, I have
18 no idea if she knows what
19 you've seen, but you
20 can answer, if you can.

21 "A. So part of it
22 is, that is going to
23 sound perhaps
24 cavalierly.

25 As long as the

1 judge is going to
2 find that our district
3 satisfies Gingles 1, I
4 don't care about that
5 number. What I care
6 about is the ability of
7 my clients to elect a
8 candidate of their choice."

9 MR. ROSENBERG: I'm going to object to the
10 attempt to impeach, and I would say it's a failed
11 attempt to impeach on the basis of part of an answer
12 and -- which it comes from part of a question and
13 doesn't give the full answer but we'll deal with that
14 on redirect.

15 MS. FEDERIGHI: Okay. I'll read the rest of
16 the answer.

17 MR. ROSENBERG: Well, I think also reading
18 the rest of the question may make a difference, which
19 is one of the reasons I objected as to the form, which
20 objection is still maintained.

21 MS. FEDERIGHI: Well, okay. I'll start on
22 Page 48, Line 9, I think, or Line 8:

23 "Q. Yes.

24 So I've seen
25 cases where they

1 have usually like
2 a little chart, a
3 table, and they say
4 District 1 has 52%.
5 CVAP, let's say --

6 "A. Yeah.

7 "Q. "-- you
8 know, black CVAP.

9 "And there's
10 usually not -- it
11 doesn't say 52 plus
12 or minus .5%.
13 There's no error
14 associated with it.
15 You're saying that
16 there is --" or
17 "-- why is there no
18 error stated with
19 those charts?

20 "MR. ROSENBERG: I'm
21 sorry. I have to object
22 as to form. When
23 you're talking charts
24 you've seen, I have no
25 idea if she knows what

1 you've seen, but you can
2 answer, if you can.

3 "A. So part of it
4 is, that is going to
5 perhaps sounds
6 cavalierly.

7 "As long as the
8 judge is going to find
9 that our district
10 satisfies Gingles 1, I
11 don't care about that
12 number. What I care
13 about is the ability of
14 my clients to elect a
15 candidate of their
16 choice.

17 "And so I
18 imagine that you can
19 have questioning of
20 the expert of when
21 you say this district
22 is 50.001 percent
23 black and CVAP, how
24 confident are you
25 about that? And

1 experts would testify,
2 based on whatever the
3 expert demographer
4 who drew the district
5 knows.

6 "But from my
7 perspective as the
8 lawyer litigating the
9 case, what I care about
10 is my expert's
11 confidence level, if
12 you will, on whether
13 the district will
14 perform.

15 "You know, from
16 my perspective I would
17 be perfectly happy with
18 districts that don't
19 satisfy Gingles 1 at
20 all if the level of
21 block votings is such
22 that my clients and
23 their community will
24 still elect a
25 candidate of their

1 choice, which is why,
2 for example, I filed
3 an Amicus brief on
4 behalf of clients in
5 the Bartlett case,
6 which is the case
7 the Supreme Court says
8 you must be 50% of
9 the voting age population."

10 MR. ROSENBERG: And my objection stands, and
11 I would also add that all of this discussion was part
12 of a larger discussion dealing with margin of error
13 that starts, I think a page or two before, but we will
14 let the record speak for itself.

15 MS. FEDERIGHI: Well, I have no further
16 questions.

17 MR. ROSENBERG: I just have -- you're
18 finished? I just have, then, just a couple
19 follow-ups.

20

21 FURTHER EXAMINATION

22 BY MR. ROSENBERG:

23 Q. Ms. Federighi discussed some cases where it
24 may be necessary to have block-level data. Do you
25 recall that?

1 A. Yes.

2 Q. First of all, how frequently does that arise,
3 in your experience?

4 MS. FEDERIGHI: Objection. Lack of
5 foundation.

6 BY MR. ROSENBERG:

7 Q. Based upon your experience.

8 A. It can sometimes arise, but generally, it's
9 not going to arise at the -- it would be illustrative
10 districts where that can sometimes arise at the
11 remedial stage of a case where in order to draw the
12 districts, you're also trying to satisfy other
13 criteria than can you create a performing district for
14 the minority community.

15 Q. Based upon your experience, have you been
16 involved in cases where block-level data was part of
17 the case?

18 A. I don't remember.

19 Q. Do you have cases where you were -- do you
20 recall cases where you were involved -- I think you
21 mentioned the Dillard case with small districts?

22 A. Yes.

23 Q. In those cases did you look for block-level
24 data?

25 A. No. In some of those cases, like the entire

1 minority community might be in a particular block
2 along with the majority community, and you relied on
3 community members to tell you, "Okay. Draw the
4 district over here" or "Draw the district over there."
5 There was one part of the Dillard case where I
6 actually relied -- I think our local expert from the
7 Alabama Democratic Conference relied on the garbage
8 men in the town to kind of tell them, "Okay. Over
9 here, this is a household that has, you know, this
10 number of people and it's African American, and over
11 here it's a White household."

12 Q. Was that evidence admitted?

13 A. Well, we settled on the districts. So we
14 didn't litigate the districts.

15 MR. ROSENBERG: Okay. I have no further
16 questions.

17 Anyone?

18 MR. DUKE: No further questions.

19 MS. FEDERIGHI: I have a further question.
20

21 FURTHER EXAMINATION

22 BY MS. FEDERIGHI:

23 Q. Professor Karlan, in your report did you
24 make -- you did not make any distinctions between the
25 Gingles 1 pre-condition -- excuse me. Let me just

1 start over.

2 Professor Karlan, in your report you did not
3 make any distinction between satisfying the
4 Precondition 1 of Gingles and the remedial stage, did
5 you?

6 A. Well, the two things are different. I don't
7 think I was asked about the remedial stage so much as
8 I was asked about what did plaintiffs have to prove to
9 establish liability.

10 Q. And your report just -- therefore, just
11 addressed the Gingles 1 precondition; is that correct?

12 A. That's correct.

13 MR. ROSENBERG: Okay. All right. Thank you.

14 THE VIDEOGRAPHER: The time is 10:51 a.m.
15 This concludes today's testimony given by Professor
16 Pamela S. Karlan. We're now off the record.

17 (Witness excused.)

18 (Deposition concluded at 10:51 a.m.)
19
20
21
22
23
24
25

C E R T I F I C A T E

I do hereby certify that the aforesaid testimony was taken before me, pursuant to notice, at the time and place indicated; that said deponent was by me duly sworn to tell the truth, the whole truth, and nothing but the truth; that the testimony of said deponent was correctly recorded in machine shorthand by me and thereafter transcribed under my supervision with computer-aided transcription; that the deposition is a true and correct record of the testimony given by the witness; and that I am neither of counsel nor kin to any party in said action, nor interested in the outcome thereof.



Nancy J. Martin, RMR, CSR

Dated: December 18, 2018

(The foregoing certification of this transcript does not apply to any reproduction of the same by any means, unless under the direct control and/or supervision of the certifying shorthand reporter.)

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ACKNOWLEDGMENT OF DEPONENT

I, PAMELA S. KARLAN, J.D., do hereby certify
that I have read the foregoing pages, _____ to
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of the answers given by me to the questions therein
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Subscribed and sworn to before me this _____ day
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My commission expires: _____.

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF SEPTEMBER 1, 2016. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

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CERTIFICATE OF SERVICE

Case Name: **State of California, et al. v.** No. **3:18-cv-01865**
Wilbur L. Ross, et al.

I hereby certify that on January 2, 2019, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

NOTICE OF FILING TRIAL DEPOSITION TRANSCRIPT FOR PAMELA KARLAN

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on January 2, 2019, at Sacramento, California.

Tracie L. Campbell
Declarant

/s/ Tracie Campbell
Signature